

**11 KAR 12:040. Residency classification for Kentucky Educational Savings Plan Trust vested participation agreements.**

RELATES TO: KRS 164A.305(14), 164A.330(6)

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(9) authorizes the board to promulgate administrative regulations to implement the Kentucky Educational Savings Plan Trust. KRS 164A.330(6) requires that each participation agreement provide that for a vested participation agreement, the beneficiary shall be considered a resident of the Commonwealth for tuition purposes if the beneficiary enrolls in an institution of higher education in Kentucky. This administrative regulation establishes the standards for proof of residency of a beneficiary for a vested participation agreement.

Section 1. Residency Requirement. (1) A person who has been a resident of the Commonwealth of Kentucky for at least eight (8) continuous years and was designated as a beneficiary under a participation agreement that is in full force and effect for that entire eight (8) year period, shall be deemed to have a vested participation agreement, even if the beneficiary leaves the state prior to enrollment in an institution of higher education.

(2) For purposes of subsection (1) of this section, a participation agreement shall be deemed to be in full force and effect if, at the end of the eight (8) year period, the total contributions of principal to the account that remain in the account balance equals \$2400 and the participation agreement has not been cancelled at the time that the beneficiary first enrolls in an institution of higher education.

Section 2. Proof of Residency. (1) Following the expiration of the period of eight (8) years of continuous residency by the beneficiary, either the participant or the beneficiary shall submit to the program administrator evidence of the residency to establish a vested participation agreement. Evidence submitted on behalf of a dependent person shall pertain to the domicile of either parent during the claimed period of residency. An individual who enrolls in college immediately following graduation from high school and remains enrolled shall:

(a) Be treated as a dependent person unless the contrary is evident from the information submitted; and

(b) Have his domicile inferred from the student's permanent address, parent's mailing address, or location of high school of graduation.

(2) A person claiming independent status shall document independent status under subsection (4) of this section and shall demonstrate by clear and convincing evidence that domicile in Kentucky has been established by that person's acts.

(3) The determination of residency shall be based upon verifiable circumstances or actions. A single fact shall not be paramount, and each situation shall be evaluated to identify those facts which are essential to the determination of domicile.

(4) The following facts, although not conclusive, shall have probative value in support of a claim for resident classification:

(a) Full-time employment in Kentucky or transfer to an employer in contiguous area while maintaining domicile in Kentucky;

(b) Filing of Kentucky resident income tax return for each applicable calendar year of claimed residency status;

(c) Attendance as a full-time, nonresident student at an out-of-state institution of higher education while determined to be a resident of Kentucky;

(d) Abandonment of a former domicile and establishing domicile in Kentucky with attendance at

an institution of higher education following and incidental to the change in domicile;

- (e) Payment of occupational taxes in Kentucky;
- (f) Payment of real property taxes in Kentucky;
- (g) Payment of intangible personal property taxes in Kentucky;
- (h) Ownership of real property in Kentucky, if the property was used as a residence during the claimed period of residency status;
- (i) Long-term lease of housing during the claimed period of residency status;
- (j) Kentucky automobile registration during the claimed period of residency;
- (k) Kentucky driver's license during the claimed period of residency status;
- (l) Registration as a Kentucky voter during the claimed period of residency; or
- (m) Corroborating affidavit of a nonrelative.

(5) The determination of residency shall be based upon verifiable circumstances or actions and authenticated copies of relevant documentation. The program administrator may request additional documentation to clarify circumstances and shall formulate a decision that considers all relevant facts.

Section 3. Nontransferability of Vested Participation Agreement. Although the participant may freely substitute beneficiaries under a participation agreement, the residency status acquired by a beneficiary of a vested participation agreement shall not be used to confer residency status on a substituted beneficiary, nor shall the residency of one (1) beneficiary be taken into account in the establishment of a vestment period for a substituted beneficiary. (17 Ky.R. 3572; eff. 8-2-1991; 19 Ky.R. 437; eff. 10-1-1992; 25 Ky.R. 393; 811; eff. 10-1-1998; 26 Ky.R. 2286; eff. 8-14-2000; 28 Ky.R. 1438; 1789; eff. 2-11-2002; Crt eff. 9-28-2018.)